**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 11757 OF 2000**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**PRATAP KESAR CHAUDHARY - Petitioner(s)**
**Versus**
**EXECUTIVE ENGINEER,**
**GUJARAT WATER RESOURCES DEPARTMENT - Respondent(s)**

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**Appearance :**
Smt. Sangeeta Pahwa for Petitioner(s).
Ms. Harshal Pandya for Respondent(s).

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 26/07/2007**

**ORAL JUDGMENT**

The petitioner-workman, being aggrieved by the award dated 5th January, 2000 made by the learned Labour Court, Kalol, North

Gujarat, in Reference (LCK) No.76 of 1987, is before this Court with a complaint that the learned Court below was unjustified in rejecting the reference.

2. The petitioner, in support of his case that he had worked for 240 days in 12 (twelve) calendar months preceding the date of removal/retrenchment and his removal was amounting to illegal retrenchment, has produced a certificate before the learned lower Court, the certificate was issued by the Deputy Executive Engineer, Mehsana, the person who was required to maintain the service records of the petitioner. He also made an application before the learned Labour Court that the respondent-employer be directed to produce the original records, but, for the reasons best known to them, the employer did not produce the original records. It appears that on an earlier occasion, the learned Labour Court, relying upon the certificate issued by the Deputy Executive Engineer, Mehsana, made an award on 30th July, 1993 directing reinstatement of the petitioner with back-wages. However, the said *ex parte* award came to be set aside and the matter was again taken up in hearing. This time, according to the complaint of the petitioner, without there being changed circumstances or any additional evidence, to controvert the averments of the petitioner, the learned Labour Court rejected the reference.

3. Smt. Sangeeta Pahwa, learned Counsel for the petitioner, submitted that the certificate issued by the competent officer, having not been denied by the respondent, would assume importance and would also bind the respondent. She submitted that in the affidavit dated 25th July, 2007 filed before this Court, the respondent has not assigned any good, bad or indifferent reason as to why they did not produce the original records when they were summoned through the agency of the Court. She also submitted that unless genuineness of the certificate issued by the Deputy Executive Engineer, Mehsana is challenged, the same would bind the parties and the Court will have to hold that the petitioner had worked for 240 or more days in 12 (twelve) calendar months preceding the illegal retrenchment.

4. Ms. Harshal Pandya, learned Counsel for the respondent, after taking me through the affidavit dated 25th July, 2007, submitted that the matter is relating to the year 1984 and after transfer of some divisions from one to another, the records are at present not traceable. She also submitted that some of the vouchers relating to the payment made to the petitioner are not available with them, therefore, the respondent is unable to make any statement. She also submitted that the petitioner's submission that he worked for full time in the month of July-1983, would be wrong because he had been paid for four days in July-1983.

5. Taking up the last contention raised by Ms. Pandya, I must observe that the petitioner had worked at Shankheshwar for four days and thereafter, he was transferred to Boratwada, which would mean that the petitioner continued to work with them. The certificate issued by the competent officer under whom the petitioner was working cannot be lightly brushed aside simply on the ground that the department does not have a duplicate copy or carbon copy of the same.

6. If the records at present are not available with the respondent, then too, the petitioner's right would not stand adversely affected because when he made an application before the learned Labour Court for production of the records, it was not the case of the respondent that the original records were not available with it.

7. True it is, that the basic burden to prove that the workman had worked for 240 or more days is always upon the workman, but, it cannot be lost sight of that the workman is always handicapped in maintaining the records, while on the other hand, the Establishment always maintains the records. In a case like the present, where the respondent, who could produce the original records available with it, if failed in discharging its duty, then, it cannot be allowed to say that adverse inference should be drawn against the petitioner for non-

production of the records. The petitioner had done whatever was within his reach and if the respondent, for the reasons best known to it, did not file or produce the original records, then, adverse inference will have to be drawn against the respondent-employer.

8. On the strength of the certificate, the statement made by the workman and because of non-production of the original records on the part of the respondent, I hold that the petitioner had worked for 240 or more days within 12 (twelve) calendar months before his illegal retrenchment.

9. In the result, I allow the petition with a direction that the petitioner should be reinstated in the employment by the respondent. The petitioner would be entitled to all the consequential benefits flowing from the service and he would also be entitled to 40% back-wages from the date of the reference till the date of this judgement. Rule is made absolute. No costs.

***[R.S.Garg, J.]***

*kamlesh**